

**Jefferson-Pilot Insurance Company vs. Christopher L. Kearney
Valerie Loftin**

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<p>1 least a 75 percent loss in his earnings?</p> <p>2 A. I wasn't aware of the percentage of loss of earnings.</p> <p>3 Q. Are you comfortable in concluding from that sentence</p> <p>4 that if that's the case, he's entitled to the full</p> <p>5 benefit for total disability?</p> <p>6 A. You'd have to look back at the definition of total</p> <p>7 disability under the policy.</p> <p>8 Q. Why? We're talking about residual disability. It</p> <p>9 says for residual disability if your loss of earnings</p> <p>10 is at least 75 percent, the full benefit for total</p> <p>11 disability will be payable. Why should we have to</p> <p>12 look back at total disability since we're just talking</p> <p>13 about what's payable for residual disability and your</p> <p>14 document says that on residual disability when your</p> <p>15 loss is more than 75 percent, you get the full benefit</p> <p>16 for total disability, whatever it is, whatever the</p> <p>17 full benefit for total disability is. We don't even</p> <p>18 have to look at what that is right now. But you get</p> <p>19 whatever that is if you have a greater than 75 percent</p> <p>20 loss in residual disability. Isn't that what that</p> <p>21 says?</p> <p>22 MR. ELLIS: Objection.</p> <p>23 A. This is not the contract.</p> <p>24 Q. Okay. That's what this says. I understand this is</p> <p>25 not a contract, but that's what this says, right?</p>	<p>1 Q. I'm not saying it does. I'm just saying that's what</p> <p>2 that sentence says, correct?</p> <p>3 A. That's your interpretation of that sentence.</p> <p>4 Q. What's yours?</p> <p>5 A. I don't have an interpretation.</p> <p>6 Q. Why not?</p> <p>7 A. Because I'm not handling this claim.</p> <p>8 Q. Is yours different than mine?</p> <p>9 A. I don't know.</p> <p>10 Q. Does mine miss the unambiguous intended meaning of</p> <p>11 that sentence?</p> <p>12 A. I can't answer that.</p> <p>13 Q. Okay. Because the lawsuit hinges on that answer or</p> <p>14 because you really disagree with me, which one?</p> <p>15 MR. ELLIS: Objection.</p> <p>16 A. Because I really can't understand your line of</p> <p>17 questioning.</p> <p>18 Q. All right. Even though you say that that document</p> <p>19 isn't controlling and even though you say that you</p> <p>20 can't agree with my interpretation because it's</p> <p>21 beyond -- my interpretation is beyond comprehension,</p> <p>22 isn't that the way your company paid Mr. Kearney from</p> <p>23 1993 through 2002, consistent with my interpretation</p> <p>24 of what we just read?</p> <p>25 A. I'll say again, I have not reviewed the claim file.</p>
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<p>1 A. I don't know, because I think you just went back to</p> <p>2 paraphrasing again.</p> <p>3 Q. Okay. I just paraphrased. You can't answer that</p> <p>4 that's what this says? You can't conclude that your</p> <p>5 document upon which you sold Mr. Kearney to give you a</p> <p>6 lot of money says that if his loss of earnings is at</p> <p>7 least 75 percent on residual disability, he gets the</p> <p>8 full benefit for total disability?</p> <p>9 A. That's not what that says.</p> <p>10 Q. I know I didn't read the language exactly, but that's</p> <p>11 what it says. That's what it means, isn't it? Do you</p> <p>12 want me -- I'll read the language again, okay?</p> <p>13 The last sentence in that paragraph says, "If</p> <p>14 the loss of earnings is at least 75 percent, the full</p> <p>15 benefit for total disability will be payable." Did I</p> <p>16 read it correctly that time?</p> <p>17 A. You read it correctly that time.</p> <p>18 Q. Okay. And what that means is, if your loss of</p> <p>19 earnings on residual disability is greater than</p> <p>20 75 percent, you will be paid the full benefit for</p> <p>21 total disability, isn't that right?</p> <p>22 A. I can't answer that.</p> <p>23 Q. Why not?</p> <p>24 A. Because this is not what controls the relationship for</p> <p>25 the payment.</p>	<p>1 My understanding is that we made a mistake in the way</p> <p>2 benefits were paid.</p> <p>3 Q. And the mistake you made is consistent with the way I</p> <p>4 just read that language, correct?</p> <p>5 A. I can't answer that. I don't know.</p> <p>6 Q. Okay.</p> <p>7 MS. FARABOW: Mr. Roberson is here. I just</p> <p>8 wanted to let you know.</p> <p>9 MR. ROBERTS: Thank you.</p> <p>10 Q. How many of these policies like Mr. Kearney's were</p> <p>11 sold?</p> <p>12 A. I don't know.</p> <p>13 Q. Is there any way you could find that out?</p> <p>14 A. I don't know. I don't know whether I could. I don't</p> <p>15 know if that information is available anywhere.</p> <p>16 Q. Are you mindful that the term "residual disability"</p> <p>17 does not exist in the policy Mr. Kearney purchased?</p> <p>18 Without referring to any rider, in the core policy</p> <p>19 there is no reference to residual disability</p> <p>20 whatsoever? Are you mindful of that?</p> <p>21 A. I was unaware of that, no.</p> <p>22 Q. You were not aware of that?</p> <p>23 A. No.</p> <p>24 Q. Do you want to read it to confirm that I'm telling you</p> <p>25 the truth? Why don't you. It's Exhibit 3. I think</p>

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1 you have it.
 2 A. (Witness reviews document)
 3 (Discussion off the record)
 4 (Brief recess)
 5 A. I found one reference to residual disability benefit.
 6 Q. Where is that?
 7 A. A medical disclosure authorization.
 8 Q. That's not the policy. I was talking about the core
 9 policy from page 1 of the policy through page 6 which
 10 ends with the signature of the Chairman of the Board
 11 and Chief Executive Officer and the Secretary.
 12 A. The application is considered to be a part of the
 13 policy, but yes, in the preceding pages there was no
 14 reference that I could find to residual disability
 15 benefit.
 16 Q. Page 2 of this contains the table of contents, the
 17 entire table of contents, and the document has six
 18 pages that concludes with signatures. Nowhere in
 19 those six pages is there any reference to residual
 20 disability, correct?
 21 A. In those six pages, no.
 22 Q. There is no reference in those six pages, correct?
 23 A. There is no reference in those six pages, correct.
 24 Q. Thank you. All of the definitions in that policy --
 25 because there is no reference whatsoever to residual

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1 disability, all of the definitions are couched in
 2 terms of total disability, correct?
 3 A. I don't have personal knowledge of the contents of
 4 this particular policy --
 5 Q. Take -- wait, no, hold on. You just took -- we just
 6 went -- he went to the bathroom. We took about ten
 7 minutes off the record for you to read it.
 8 A. And I was looking for residual disability.
 9 Q. Okay. Now, read it again and confirm for me that
 10 because residual disability does not exist -- the term
 11 does not exist in this policy, all of the definitions
 12 within this policy and that would be applicable are
 13 defined in the context of total disability, correct?
 14 A. No.
 15 Q. Take as long as you like.
 16 A. I don't agree with that statement.
 17 Q. Okay. Where is there a definition in these six pages
 18 that defines a term in the context of a residual
 19 disability?
 20 A. You said because there is no disability definition.
 21 That's the way you prefaced the question. That's what
 22 confused me.
 23 Q. That wasn't what I said. Let me restate --
 24 A. That's what you said. You said because --
 25 Q. That's not what I said.

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1 A. What did he say?
 2 Q. That's not what I said. Let me restate the question
 3 so there's no confusion, no ambiguity. We don't want
 4 any ambiguity here, okay? Because residual
 5 disability, that term, is not included in these six
 6 pages, all the defined terms are couched in terms of
 7 total disability only, correct?
 8 A. The policy addresses insureds against loss due to
 9 total disability.
 10 Q. Simple question. Can you confirm for me that all of
 11 the defined terms in this six-page policy are defined
 12 in the context of total disability or can you not do
 13 that?
 14 A. I cannot do that because I'm not that familiar with
 15 the contract.
 16 Q. Take as long -- we have seven hours and we have about
 17 four hours left. If you need all four hours to
 18 familiarize yourself with the definitions in this
 19 six-page contract to confirm for me that question, do
 20 it.
 21 A. Okay. (Witness reviews document) Can you repeat the
 22 question.
 23 MR. ROBERTS: Could you kindly read it back.
 24 (The last question was read back by the court
 25 reporter.)

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1 A. I can confirm that in these six pages that is true.
 2 Q. Okay. But the company would sell residual disability
 3 riders to append to this policy, correct?
 4 A. They would sell an additional residual disability
 5 benefit.
 6 Q. That's not a freestanding contract; it needs to append
 7 itself to some disability insurance policy that was
 8 principally sold, in this case this policy?
 9 A. In this case it was, yeah.
 10 Q. Okay. There's nothing in that six pages of Exhibit 2
 11 that suggests how you apply those definitions if a
 12 residual disability is at issue as opposed to total
 13 disability, correct?
 14 A. No, this addresses total disability, benefits for
 15 total disability.
 16 Q. Again I asked you a negative question and your first
 17 response was no, so if I have someone else read your
 18 transcript at the trial, it's going to look odd.
 19 There's nothing in the six pages that
 20 clarifies for a policyholder the applicability of
 21 those defined terms in those six pages when residual
 22 disability is the issue, correct?
 23 A. I repeat that I have found no reference to residual
 24 disability within these six pages.
 25 Q. Okay. But there are defined terms in that six pages

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<p>1 that do apply in cases of residual disability; isn't</p> <p>2 that true?</p> <p>3 A. I don't know.</p> <p>4 Q. Okay. Can you look at the definition of elimination</p> <p>5 period for me on page 3. Do you see the definition of</p> <p>6 elimination period?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. Is there a separate definition of elimination</p> <p>9 period that you're aware of in any rider, proposal,</p> <p>10 policy that applies to residual disability?</p> <p>11 A. I don't know.</p> <p>12 Q. So you don't know if this elimination period in the</p> <p>13 core policy on page 3 of the policy applies in cases</p> <p>14 of residual disability?</p> <p>15 A. I think the contract speaks for itself.</p> <p>16 Q. Okay. Does the contract contain any other definition</p> <p>17 of elimination period that applies to residual</p> <p>18 disability instead of total disability?</p> <p>19 A. I don't know.</p> <p>20 Q. Okay. Can you turn to the residual disability rider</p> <p>21 which is Exhibit 4. Do you see the second column</p> <p>22 there, the heading is Residual Disability Benefit?</p> <p>23 A. Yes.</p> <p>24 Q. And then there's a sentence with a sub A, sub B. The</p> <p>25 next sentence says, "This benefit will begin (a) the</p>	<p>1 applies to total disability is adopted for residual</p> <p>2 disability as well?</p> <p>3 A. I think the contract speaks for itself.</p> <p>4 Q. How about maximum benefit period, can you turn to page</p> <p>5 3 of the policy and locate the definition of maximum</p> <p>6 benefit period for me.</p> <p>7 A. Yes.</p> <p>8 Q. Okay. It's defined in the context of total</p> <p>9 disability, correct?</p> <p>10 A. I think the contract speaks for itself.</p> <p>11 Q. Are the words "total disability" in the definition?</p> <p>12 A. The words "total disability" are in the maximum</p> <p>13 benefit period definition.</p> <p>14 Q. Capital T for total, capital D for disability?</p> <p>15 A. Yes.</p> <p>16 Q. And the words "residual disability" don't reside in</p> <p>17 the definition, correct?</p> <p>18 A. Yes.</p> <p>19 Q. Now, can you turn to the residual disability rider.</p> <p>20 That's Exhibit 4. We were in the second column</p> <p>21 before. We were under the sentence "This benefit will</p> <p>22 begin." The next paragraph, do you see that "during,"</p> <p>23 it starts with "during"?</p> <p>24 A. Yes.</p> <p>25 Q. "During a period of residual disability,</p>
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<p>1 next day after the end of the Elimination Period shown</p> <p>2 in the schedule." So let's turn to the schedule. The</p> <p>3 schedule is attached to Exhibit 2. The policy is</p> <p>4 Exhibit 2 -- I'm sorry, Exhibit 3. The policy is</p> <p>5 Exhibit 3.</p> <p>6 A. That's what I was looking for. Okay.</p> <p>7 Q. Turn to the schedule. Are you at the schedule?</p> <p>8 A. What page are you on?</p> <p>9 Q. Do you know what the schedule is? The seventh or</p> <p>10 eighth page of the exhibit, at the top says Schedule?</p> <p>11 A. Okay.</p> <p>12 Q. Okay. Are we in agreement that the only reference to</p> <p>13 elimination period on the schedule is under the</p> <p>14 heading -- the second line underneath Monthly Benefit,</p> <p>15 which all fall under the heading for Total Disability</p> <p>16 Due to, and then for Injury, elimination period is 90</p> <p>17 days and for sickness the elimination period is 90</p> <p>18 days and there's no other reference to elimination</p> <p>19 period on the schedule, is there?</p> <p>20 A. I think the schedule speaks for itself.</p> <p>21 Q. Do you see any other reference to elimination period</p> <p>22 other than the one I just referenced on the schedule?</p> <p>23 A. No, I do not.</p> <p>24 Q. Okay. So can we agree that the total disability</p> <p>25 policy, defined term of elimination period as it</p>	<p>1 Jefferson-Pilot will continue to pay the residual</p> <p>2 disability monthly benefit for each month you are</p> <p>3 residually disabled until the combination of total</p> <p>4 disability and residual disability benefits equal the</p> <p>5 maximum benefit period."</p> <p>6 Is there anywhere a defined maximum benefit</p> <p>7 period for residual disability that's independent from</p> <p>8 the maximum benefit period definition we just saw in</p> <p>9 the policy?</p> <p>10 A. Not that I'm aware of.</p> <p>11 Q. Okay. Can you turn to the schedule again, Exhibit 3.</p> <p>12 We were at elimination period the last time we visited</p> <p>13 this document. The third line, the next line says</p> <p>14 Maximum Benefit Period. Do you see that?</p> <p>15 A. Yes, I do.</p> <p>16 Q. And that, too, falls under the heading for Total</p> <p>17 Disability Due to either injury or sickness, and then</p> <p>18 there's three different maximum benefit periods for</p> <p>19 periods of continuous total disability. Do you see</p> <p>20 that?</p> <p>21 A. Yes, I do.</p> <p>22 Q. Is there anywhere that you're aware of in any policy,</p> <p>23 proposal, rider that defines a maximum benefit period</p> <p>24 independent of total disability and exclusively for</p> <p>25 residual disability?</p>

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<p style="text-align: right;">Page 146</p> <p>1 A. Not that I'm aware of.</p> <p>2 Q. Is there a maximum benefit period for residual</p> <p>3 disability?</p> <p>4 A. I can't answer that question. I think the contract</p> <p>5 speaks for itself.</p> <p>6 Q. Okay. I do, too. Can you turn to Exhibit 3, the</p> <p>7 policy, page 3, the Definitions section, and here I'd</p> <p>8 like to focus in on the defined term of Monthly</p> <p>9 Benefit. Do you see that there in the second column</p> <p>10 of Definitions?</p> <p>11 A. Yes, I do.</p> <p>12 Q. And it says, "Monthly benefit means the amount shown</p> <p>13 in the schedule or one-thirtieth of such amount for</p> <p>14 each day of any period of total disability that does</p> <p>15 not equal a whole month." Did I read that correctly?</p> <p>16 A. Yes.</p> <p>17 Q. There's no reference to residual disability in that</p> <p>18 definition, correct?</p> <p>19 A. No, there's not.</p> <p>20 Q. Now let's turn to the residual disability rider. In</p> <p>21 the first column, three-fourths of the way down, there</p> <p>22 is a paragraph that starts, "Residual Disability</p> <p>23 Monthly Benefit," almost all the way at the bottom.</p> <p>24 Do you see that?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 148</p> <p>1 is there any reference to monthly disability other</p> <p>2 than those?</p> <p>3 A. I don't know, not to my personal knowledge.</p> <p>4 Q. Okay. Back to Exhibit 3, page 3, the Definitions</p> <p>5 section. Actually I want to focus on the next</p> <p>6 heading, Benefit Provisions.</p> <p>7 A. Which page are you on?</p> <p>8 Q. Page 3 of Exhibit 3. The heading is Benefit</p> <p>9 Provisions and the first subsection says Benefits for</p> <p>10 Total Disability Due to Injury and the second</p> <p>11 subsection says Benefits for Total Disability Due to</p> <p>12 Sickness, right?</p> <p>13 A. Yes.</p> <p>14 Q. In neither of those paragraphs and subsections is</p> <p>15 there reference to residual disability. There's</p> <p>16 reference only to total disability, right?</p> <p>17 A. Yes.</p> <p>18 Q. But you would agree with me that residual disability</p> <p>19 benefits are available when residual disability is due</p> <p>20 to an injury or due to a sickness, right?</p> <p>21 A. I think the contract speaks for itself.</p> <p>22 Q. Is there any section of the contract, riders, policies</p> <p>23 that specifically sets forth a different definition</p> <p>24 that applies only in residual disability for those</p> <p>25 items?</p>
<p style="text-align: right;">Page 147</p> <p>1 Q. The sentence above that says, "Monthly benefit is the</p> <p>2 amount shown in the schedule as such." Do you see</p> <p>3 that?</p> <p>4 A. Yes.</p> <p>5 Q. Just like the policy, it refers you to the schedule.</p> <p>6 Now let's turn to the schedule.</p> <p>7 Other than the first line under the heading</p> <p>8 "For Total Disability Due To," then the first line</p> <p>9 underneath that says Monthly Benefit. Do you see any</p> <p>10 reference to monthly benefit on this document other</p> <p>11 than that reference?</p> <p>12 A. I don't see another reference to monthly benefit on</p> <p>13 that page.</p> <p>14 Q. Let's go to the proposal, Exhibit 14. Page 2,</p> <p>15 Exhibit 14. The first item underneath Basic</p> <p>16 Benefits -- and we've talked about basic benefits a</p> <p>17 long time before, but the first line says, "Monthly</p> <p>18 Benefit for Total Disability," right?</p> <p>19 A. Yes.</p> <p>20 Q. And it says that Mr. Kearney's monthly benefit for</p> <p>21 total disability is 2,125, right?</p> <p>22 A. Yes.</p> <p>23 Q. Do you know of anywhere in the policy, proposal,</p> <p>24 riders, any other marketing material that defines</p> <p>25 monthly benefit for residual disability other than --</p>	<p style="text-align: right;">Page 149</p> <p>1 A. Not to my personal knowledge.</p> <p>2 Q. Only the next page 4 of Exhibit 3 there's a heading</p> <p>3 called Recurring Disabilities. Do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. Is it possible to have a residual disability that's a</p> <p>6 recurring disability?</p> <p>7 A. I can't answer that. I think the contract speaks for</p> <p>8 itself.</p> <p>9 Q. You don't know if your company pays residual</p> <p>10 disability benefits for people who suffer residual</p> <p>11 disabilities that are intermittent and recurring?</p> <p>12 A. It would depend on the language in the policy of --</p> <p>13 Q. Are you mindful of any definition of recurring</p> <p>14 disability that applies exclusively to residual</p> <p>15 disability instead of total disability as this one is?</p> <p>16 A. I'm not mindful of any definitions.</p> <p>17 Q. How about the definition of surgical transplant in the</p> <p>18 next column of page 4 of Exhibit 3? It's defined</p> <p>19 exclusively to apply to total disability, but isn't it</p> <p>20 possible that someone could suffer a residual</p> <p>21 disability as a result of a surgical transplant?</p> <p>22 A. I think the contract speaks for itself.</p> <p>23 Q. Do you have know of any surgical transplant definition</p> <p>24 in the policy or the rider that apply exclusively to</p> <p>25 residual disability?</p>

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<p>1 A. Not to my personal knowledge.</p> <p>2 Q. Would you turn to the schedule for me. There's no</p> <p>3 express statement on this schedule that the cost of</p> <p>4 living increase and the Social Security Supplement</p> <p>5 benefit do not apply in periods of residual</p> <p>6 disability; isn't that correct?</p> <p>7 A. I think the contract speaks for itself.</p> <p>8 Q. Do you see any express language on this schedule that</p> <p>9 says that COLA and Social Security don't apply to</p> <p>10 residual disability?</p> <p>11 A. I don't see any reference to residual disability.</p> <p>12 Q. There is a reference to residual disability. This</p> <p>13 schedule identifies that Mr. Kearney purchased the</p> <p>14 additional benefit of residual disability. Do you see</p> <p>15 that?</p> <p>16 A. I'm talking about at the top of the page.</p> <p>17 Q. Correct, but on this page of the schedule, the only</p> <p>18 reference to residual disability on the schedule is</p> <p>19 the suggestion that Mr. Kearney actually paid your</p> <p>20 company money to buy that benefit, right?</p> <p>21 A. I agree that there is a reference to residual</p> <p>22 disability under the Additional Benefit Provisions</p> <p>23 Included, If Any.</p> <p>24 Q. You agree that there's a what? I'm sorry?</p> <p>25 A. There's a reference to residual disability under the</p>	<p>1 did not see those words in the policy.</p> <p>2 Q. Is there anything in the six-page policy or the</p> <p>3 schedule that suggests what I said without using my</p> <p>4 words?</p> <p>5 A. I think the contract speaks for itself.</p> <p>6 Q. Okay. Is there anything in the policy or the schedule</p> <p>7 that suggests what I said without using my express</p> <p>8 language?</p> <p>9 A. I think the policy speaks for itself.</p> <p>10 Q. Does the policy say that?</p> <p>11 A. I think the policy speaks for itself.</p> <p>12 Q. Does the policy say what I said?</p> <p>13 A. The policy speaks for itself.</p> <p>14 Q. Okay, fine, the policy speaks for itself, fine. Can</p> <p>15 you tell me that the policy says that COLA and Social</p> <p>16 Security Supplement in an express manner don't apply</p> <p>17 to residual disability?</p> <p>18 A. What I'm saying is, the sentence that you just used in</p> <p>19 your earlier question is not contained in this policy.</p> <p>20 The policy speaks for itself.</p> <p>21 Q. I can ask as many questions as I want and I understand</p> <p>22 I asked you a question before. I'm going to ask you a</p> <p>23 new question.</p> <p>24 A. Okay.</p> <p>25 Q. Okay. Is there anything that expressly says,</p>
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<p>1 Additional Benefit Provisions Included, If Any.</p> <p>2 Q. Is there anything on this schedule that explicitly</p> <p>3 says the cost of living increase and Social Security</p> <p>4 Supplement benefit don't apply for residual</p> <p>5 disability?</p> <p>6 A. Those words don't appear on this schedule.</p> <p>7 Q. Say again.</p> <p>8 A. Those words don't appear -- that you just said don't</p> <p>9 appear on the schedule.</p> <p>10 Q. The explicit statement that they don't apply during</p> <p>11 residual disability does not appear on the schedule?</p> <p>12 A. What you just said does not appear on the schedule.</p> <p>13 Q. I asked another question.</p> <p>14 A. Okay.</p> <p>15 Q. There is nothing on the schedule that explicitly says</p> <p>16 that the cost of living increase and Social Security</p> <p>17 Supplement do not apply for residual disability,</p> <p>18 correct?</p> <p>19 A. There is nothing that says that the cost of living --</p> <p>20 what you just said is not written on this schedule.</p> <p>21 Q. You agree with me?</p> <p>22 A. That it's not written on the schedule, yes.</p> <p>23 Q. Okay. And there's nothing in the six-page policy that</p> <p>24 says it either, right?</p> <p>25 A. That is written with the words that you just used, I</p>	<p>1 explicitly says, if you're on residual disability, you</p> <p>2 do not get COLA and you do not get Social Security</p> <p>3 Supplement? Is that anywhere in the policy?</p> <p>4 A. In these six pages?</p> <p>5 Q. Anywhere. Is there anywhere that it says -- do you</p> <p>6 want to take a break?</p> <p>7 A. No.</p> <p>8 Q. Okay. Is there anything in the contract, whatever you</p> <p>9 consider the contract to be -- you don't consider the</p> <p>10 proposal to be the contract, fine. Whatever you</p> <p>11 believe the contract to be, is there anything in there</p> <p>12 that says expressly, a person on residual disability</p> <p>13 is not entitled to COLA or the Social Security</p> <p>14 Supplement benefit?</p> <p>15 A. There is nothing in the contract that says what you</p> <p>16 just said.</p> <p>17 Q. Okay. Is there anything in the contract that says</p> <p>18 what I said explicitly without using the words I used?</p> <p>19 A. I think the contract speaks for itself.</p> <p>20 Q. You can't point me to anything that is expressly</p> <p>21 saying in effect what I said, maybe using different</p> <p>22 words?</p> <p>23 A. I can't point to anything in the contract saying what</p> <p>24 you said.</p> <p>25 Q. Okay.</p>

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<p style="text-align: right;">Page 154</p> <p>1 A. Otherwise the contract speaks for itself.</p> <p>2 Q. Okay. But my question -- you got to answer my</p> <p>3 question and my question said that different words can</p> <p>4 be used. The English language is made up of millions</p> <p>5 of words. Some of those words have the same meaning.</p> <p>6 So don't get hung up on the words I use.</p> <p>7 Is there anything in what you consider to be</p> <p>8 the contract that explicitly says, using the words I</p> <p>9 used or other words, what I said, that is, COLA,</p> <p>10 Social Security don't apply to residual disability?</p> <p>11 A. And I answered the question, I think the contract</p> <p>12 speaks for itself.</p> <p>13 Q. You can't point me to any express language in the</p> <p>14 policy that says that, correct?</p> <p>15 A. I can't point to any express language that says what</p> <p>16 you just said.</p> <p>17 MR. ROBERTS: Can we take break so I can get</p> <p>18 a videographer in here and ask that question again?</p> <p>19 MR. ELLIS: Do whatever you like.</p> <p>20 MR. ROBERTS: Do you have a videographer</p> <p>21 handy?</p> <p>22 (Discussion off the record)</p> <p>23 Q. Okay. Go ahead.</p> <p>24 MR. ELLIS: Go ahead what? There's no</p> <p>25 question pending.</p>	<p style="text-align: right;">Page 156</p> <p>1 words are expressed in the contract?</p> <p>2 A. I think the contract speaks for itself.</p> <p>3 Q. Okay. Can you point me to anything where the contract</p> <p>4 is speaking for itself that says what I said using</p> <p>5 potentially different words?</p> <p>6 A. No, I can't.</p> <p>7 Q. Okay. Can you turn to Exhibit 4, only instead of</p> <p>8 looking at the Residual Disability rider, this time</p> <p>9 let's look at the third page, the Additional Increase</p> <p>10 in Benefits Rider. Is there anything on the</p> <p>11 Additional Increase in Benefits Rider that says</p> <p>12 unambiguously that it is not applicable for residual</p> <p>13 disability?</p> <p>14 A. There is no reference to residual disability stated in</p> <p>15 this document.</p> <p>16 Q. Using the two words "explicit" and "express" as a</p> <p>17 frame of reference, is there anything that says</p> <p>18 anything to that effect?</p> <p>19 A. There is no reference to residual disability in this</p> <p>20 document.</p> <p>21 Q. That wasn't my question. Is there anything that</p> <p>22 references -- whatever uses of language there may be,</p> <p>23 is there anything on this rider that suggests,</p> <p>24 references, states, that it does not apply for</p> <p>25 residual disability?</p>
<p style="text-align: right;">Page 155</p> <p>1 MR. ROBERTS: I'm not talking to you.</p> <p>2 Q. Let's try this again, okay? Do you understand that</p> <p>3 the English language has millions of words?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. Do you understand that some of those words have</p> <p>6 meanings and the meaning of those words is the same</p> <p>7 meaning as other words?</p> <p>8 How about this. "Express" and "unambiguous"</p> <p>9 are two different words, correct?</p> <p>10 A. "Express" and "unambiguous" are two different words, I</p> <p>11 agree with that.</p> <p>12 Q. How about "express" and "explicit," those are two</p> <p>13 different words, right?</p> <p>14 A. They're two different words.</p> <p>15 Q. They have the same meaning, right?</p> <p>16 A. In some contexts.</p> <p>17 Q. Okay. Using that as a frame of reference, you would</p> <p>18 agree with me using my words that there is nothing in</p> <p>19 the policy that says using my words, "COLA and Social</p> <p>20 Security Supplement benefit do not apply when you're</p> <p>21 on residual disability." Those words aren't in the</p> <p>22 agreement, right?</p> <p>23 A. Those words are not in the agreement.</p> <p>24 Q. Using my example of "express" and "explicit" as a</p> <p>25 frame of reference, are there any other way that my</p>	<p style="text-align: right;">Page 157</p> <p>1 MR. ELLIS: She's answered the question.</p> <p>2 A. You'd have to read the entire contract. The contract</p> <p>3 speaks for itself.</p> <p>4 Q. You would agree with me that if you just look at this</p> <p>5 rider, it does not exclude its application in residual</p> <p>6 disability, correct?</p> <p>7 A. I would not agree with that. I said that the contract</p> <p>8 speaks for itself and you have to take the contract in</p> <p>9 its entirety.</p> <p>10 Q. You have to answer my questions, okay --</p> <p>11 A. That's what I'm trying --</p> <p>12 Q. -- and I'm looking at this page, all right?</p> <p>13 A. Yes.</p> <p>14 Q. Where on this page does it imply, suggest, state</p> <p>15 ambiguously, unambiguously, that this benefit doesn't</p> <p>16 apply for residual disability?</p> <p>17 MR. ELLIS: Object to the form.</p> <p>18 A. It does not state what you just said on this rider.</p> <p>19 Q. Okay. Does it state what I just said using words</p> <p>20 other than the words I just said?</p> <p>21 A. I can't answer that question.</p> <p>22 Q. Okay. Using "explicit" and "express" as our frame of</p> <p>23 reference -- forget about the words I just said. The</p> <p>24 meaning I conveyed to you in the question, is it</p> <p>25 stated in words other than the words that I used?</p>

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Valerie Loftin**

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<p>1 A. I think the contract speaks for itself.</p> <p>2 Q. So they're not?</p> <p>3 A. That's not what I said. I said I think the contract</p> <p>4 speaks for itself.</p> <p>5 Q. Okay. Where on this page using whatever words may</p> <p>6 exist does it say that this benefit doesn't apply in</p> <p>7 residual disability?</p> <p>8 A. I think you have to read the rider in the context of</p> <p>9 the whole policy and you're reading just this one</p> <p>10 page.</p> <p>11 Q. Okay. So the rider itself doesn't say that, correct?</p> <p>12 A. What I'm saying is, you have to read the rider in the</p> <p>13 context of the whole contract.</p> <p>14 Q. The rider itself doesn't say that, correct?</p> <p>15 A. The rider itself does not make any reference to</p> <p>16 residual disability.</p> <p>17 Q. Okay. Would you turn to the Residual Disability</p> <p>18 rider. First column, just past the halfway point,</p> <p>19 there's a sentence that says "The prior monthly</p> <p>20 income." Do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. "The prior monthly income will be adjusted at the same</p> <p>23 time and by the same percentage as the Increase in</p> <p>24 Benefits or Increase in Benefits for Total Disability</p> <p>25 provision, whichever is applicable, of this policy."</p>	<p>1 record.</p> <p>2 MR. ELLIS: Are you finished?</p> <p>3 Q. Ms. Loftin, do you agree with me that what this</p> <p>4 paragraph is telling someone you're getting money</p> <p>5 from, a policyholder, that what the company will do is</p> <p>6 make two adjustments at the same time. First, there's</p> <p>7 an adjustment to the prior monthly income, and it's</p> <p>8 done at the same time, the same percentage, as either</p> <p>9 the increase in benefits or increase in benefits for</p> <p>10 total disability, whichever is applicable, right?</p> <p>11 A. I agree that the policy speaks for itself.</p> <p>12 Q. Okay. Thank you. The way I read it is the way it</p> <p>13 speaks, right?</p> <p>14 A. I agree that the policy speaks for itself.</p> <p>15 Q. Have you ever heard it speak?</p> <p>16 A person can't at the same time receive both</p> <p>17 total disability benefits and residual disability</p> <p>18 benefits, can they?</p> <p>19 A. I don't know.</p> <p>20 Q. Why don't you just say, The policy speaks for itself,</p> <p>21 to that question?</p> <p>22 A. Because you weren't asking me to a specific policy.</p> <p>23 Q. Okay.</p> <p>24 A. You were asking me a general question.</p> <p>25 Q. How about this policy?</p>
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<p>1 You agree with me that there are two</p> <p>2 adjustments referenced in that paragraph? Two things</p> <p>3 are being adjusted? One thing is adjusted at the same</p> <p>4 time as another thing, right?</p> <p>5 A. I'm not sure I can agree with that.</p> <p>6 Q. Okay. Let me make sure I read it correctly. I'm</p> <p>7 going to read it again and tell me if I'm reading it</p> <p>8 accurately. "The prior monthly income will be</p> <p>9 adjusted at the same time and by the same percentage</p> <p>10 as the Increase in Benefits or Increase in Benefits</p> <p>11 for Total Disability provision, whichever is</p> <p>12 applicable, of this policy."</p> <p>13 So let's read this something, meaning the</p> <p>14 prior monthly income -- you're telling your</p> <p>15 policyholder that that will be adjusted at the same</p> <p>16 time that something else is adjusted, and the other</p> <p>17 thing that is adjusted is either the increase in</p> <p>18 benefits or the increase in benefits for total</p> <p>19 disability, whichever is applicable, right?</p> <p>20 MR. ELLIS: Objection, that misstates the</p> <p>21 context --</p> <p>22 MR. ROBERTS: Just object, just object.</p> <p>23 Don't tell her how to testify. What are you trying --</p> <p>24 listen, you're looking for the truth, just object. We</p> <p>25 both know you don't do that, though. Object for the</p>	<p>1 A. I don't know, I'm not --</p> <p>2 Q. Can you turn to the Social Security Supplement rider,</p> <p>3 Exhibit 4, page 2.</p> <p>4 MR. ELLIS: Is this part of the 30(b)(6)</p> <p>5 examination, this English lesson of yours?</p> <p>6 MR. ROBERTS: That's extra. I have more</p> <p>7 lessons to give to you if you have time.</p> <p>8 MR. ELLIS: I'm sure you have plenty, but I</p> <p>9 thought this was a 30(b)(6) examination.</p> <p>10 MR. ROBERTS: I thought it was, too, but you</p> <p>11 didn't produce somebody who has any information on the</p> <p>12 five topics designated in the Notice.</p> <p>13 MR. ELLIS: Actually that's not true and you</p> <p>14 know it.</p> <p>15 MR. ROBERTS: It is true Mr. Ellis will later</p> <p>16 try to take this piece of the deposition and say I did</p> <p>17 do something, because unless I respond to his false</p> <p>18 statements, he's going to misrepresent things. So</p> <p>19 it's clear as we went through previously when there</p> <p>20 was no objection that he hasn't produced someone with</p> <p>21 information on nearly every topic included in the</p> <p>22 Notice, and that's been reaffirmed throughout the</p> <p>23 deposition.</p> <p>24 Q. Social Security Supplement rider, are you there,</p> <p>25 Exhibit 4, page 2? Are you there?</p>

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<p style="text-align: right;">Page 162</p> <p>1 A. Yes, I am.</p> <p>2 Q. Okay. The second paragraph -- the first paragraph has</p> <p>3 three subsections. The second paragraph says,</p> <p>4 "However, the Social Security Supplement benefit shall</p> <p>5 not be payable unless," right?</p> <p>6 A. That's what it says, yes.</p> <p>7 Q. Okay. So in this particular rider the company went to</p> <p>8 the effort to advise the policyholder when it does not</p> <p>9 apply, right?</p> <p>10 A. Yes.</p> <p>11 Q. And does it say in there that it doesn't apply during</p> <p>12 residual disability?</p> <p>13 A. There's no reference in here to residual disability.</p> <p>14 Q. So the company went to the effort to advise the</p> <p>15 policyholder when the Social Security Supplement</p> <p>16 benefit doesn't apply, yet it made no reference to</p> <p>17 residual disability, correct?</p> <p>18 A. No, that's not the way I read it.</p> <p>19 Q. Okay. Where is the reference to residual disability?</p> <p>20 A. When you said that this paragraph says when Social</p> <p>21 Security Supplement benefit will not apply --</p> <p>22 Q. I thought we were on the same page --</p> <p>23 A. It says, "shall not be payable unless," so --</p> <p>24 Q. Okay. So there are circumstances outlined here when</p> <p>25 it's not payable, right?</p>	<p style="text-align: right;">Page 164</p> <p>1 Q. -- so that --</p> <p>2 MR. ROBERTS: Can we go off the record for a</p> <p>3 second?</p> <p>4 MR. ELLIS: No. Stay on the record.</p> <p>5 MR. ROBERTS: We're going to go off the</p> <p>6 record.</p> <p>7 MR. ELLIS: No.</p> <p>8 MR. ROBERTS: Okay. Shut up.</p> <p>9 Q. Okay. Ready?</p> <p>10 A. Yes, sir.</p> <p>11 Q. We've already established that everything on the</p> <p>12 schedule -- and there's a whole bunch of things on the</p> <p>13 schedule that apply to residual disability -- and</p> <p>14 everything in the policy -- and there's a whole bunch</p> <p>15 of things in the policy, like elimination period,</p> <p>16 monthly benefit -- we went through this -- that,</p> <p>17 although couched in terms of total disability, apply</p> <p>18 to residual disability, so that doesn't make a</p> <p>19 difference here. Is there anything on this rider that</p> <p>20 says Social Security Supplement is not payable if</p> <p>21 you're residually disabled?</p> <p>22 A. I think the contract speaks for itself.</p> <p>23 Q. Okay.</p> <p>24 MR. ROBERTS: Bill, I won't say shut up if</p> <p>25 you do what you're supposed to do and simply say</p>
<p style="text-align: right;">Page 163</p> <p>1 A. There are circumstances outlined here that I read as</p> <p>2 conditions to payment.</p> <p>3 Q. Okay. Unless those conditions are satisfied, it</p> <p>4 doesn't get paid, so you're advising somebody what</p> <p>5 conditions need to exist for this to be paid, right?</p> <p>6 A. That's what it appears to be saying.</p> <p>7 Q. And you don't say in here that you must be on total</p> <p>8 disability as opposed to residual disability for it to</p> <p>9 apply, right? That condition is not included?</p> <p>10 A. There is a reference to the requirement of total</p> <p>11 disability.</p> <p>12 Q. Okay. Does the reference to total disability say you</p> <p>13 must be on total disability and you cannot be on</p> <p>14 residual disability for this benefit to be payable?</p> <p>15 A. It says, "The monthly benefit of this policy will be</p> <p>16 increased by the amount of the Social Security</p> <p>17 Supplement benefit shown in the schedule if you are</p> <p>18 entitled to receive monthly benefits for total</p> <p>19 disability."</p> <p>20 Q. Right. Everything is defined in the context of total</p> <p>21 disability. I mean, do you want to go through the 80</p> <p>22 of them again? Everything on the schedule, everything</p> <p>23 in the policy, they're all defined in the context of</p> <p>24 total disability --</p> <p>25 MR. ELLIS: Is that a question or a speech?</p>	<p style="text-align: right;">Page 165</p> <p>1 "objection" to preserve the objection for</p> <p>2 determination by a judge later in the case. Anything</p> <p>3 you say after the word "objection" -- this is like the</p> <p>4 80th time I've told you this -- anything that comes</p> <p>5 after the word "objection" is improper coaching of the</p> <p>6 witness, and you know it, and you're sitting there</p> <p>7 like a Cheshire cat smiling with your arms above your</p> <p>8 head like you know something that I don't know, and</p> <p>9 what we both know is that you don't follow procedure.</p> <p>10 In fact, Judge Beckwith said to you three</p> <p>11 weeks ago, Mr. Ellis, you have filed five false</p> <p>12 declarations in a lawsuit.</p> <p>13 MR. ELLIS: Are you finished? Judge Beckwith</p> <p>14 never said it, you did.</p> <p>15 MR. ROBERTS: She said yeah, you have. What</p> <p>16 about that?</p> <p>17 MR. ELLIS: No, I don't believe you're right.</p> <p>18 MR. ROBERTS: It was recorded.</p> <p>19 MR. ELLIS: Good. Bring it up. Now are you</p> <p>20 finished or do you want to keep going?</p> <p>21 MR. ROBERTS: No. Do you have any lawsuits</p> <p>22 going on? I want to add as cocounsel in whatever case</p> <p>23 you have.</p> <p>24 (Defendant's Exhibit No. 15 was marked for</p> <p>25 identification by Mr. Roberts.)</p>

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<p>1 Q. Let's see, Exhibit 15, is this your sworn testimony</p> <p>2 from the King case? Have you had a chance to take a</p> <p>3 look at your deposition in the King case?</p> <p>4 MR. ELLIS: Do you have a copy for me?</p> <p>5 MR. ROBERTS: I don't.</p> <p>6 MR. ELLIS: I thought that was a requirement.</p> <p>7 MR. ROBERTS: You can get a copy later,</p> <p>8 Counsel. I'm sure your client has a copy to lend you.</p> <p>9 MR. ELLIS: Actually I thought whether I had</p> <p>10 a copy or not made no difference. It's your</p> <p>11 deposition --</p> <p>12 MR. ROBERTS: Call the judge and complain.</p> <p>13 MR. ELLIS: Just finding out what your rules</p> <p>14 are.</p> <p>15 MR. ROBERTS: I don't have my own civil</p> <p>16 procedure rules --</p> <p>17 MR. ELLIS: You do. Then where's my copy?</p> <p>18 MR. ROBERTS: -- since you haven't read the</p> <p>19 Code of Professional Responsibility or the Rules of</p> <p>20 Civil Procedure.</p> <p>21 Q. Is that your deposition transcript of sworn testimony</p> <p>22 taken in the King case?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. Thanks. Can you turn back to the policy,</p> <p>25 Exhibit 3. Now, the policy sets forth conditions</p>	<p>1 benefits if your loss is less than 20 percent from</p> <p>2 pre-disability earnings, right?</p> <p>3 A. Residual disability benefits will be paid pursuant to</p> <p>4 the terms of the policy.</p> <p>5 Q. Okay. Let's turn to the rider. Are you mindful that</p> <p>6 there's a 20 percent loss threshold before a person is</p> <p>7 entitled to benefits? The second column, Limitations</p> <p>8 is the heading, "The residual disability benefit will</p> <p>9 not be paid for any period of time during which your</p> <p>10 loss of monthly income is not at least 20 percent of</p> <p>11 your prior monthly income"; is that right?</p> <p>12 A. Yes.</p> <p>13 Q. It also limits benefits in the event that you're not</p> <p>14 under the care and attendance of a doctor, right?</p> <p>15 A. Benefits will not be paid for any period of time that</p> <p>16 you're not under the care and attendance of a doctor.</p> <p>17 Q. So the residual disability rider sets forth</p> <p>18 unambiguously conditions that, if exist, don't entitle</p> <p>19 you to benefits, right?</p> <p>20 A. Could you repeat that.</p> <p>21 MR. ROBERTS: Can you read it back for her.</p> <p>22 (The last question was read back by the court</p> <p>23 reporter.)</p> <p>24 A. I think that the contract speaks for itself.</p> <p>25 Q. Are you aware of anyone being criticized or</p>
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<p>1 that, if applicable, don't entitle a policyholder to</p> <p>2 benefits. For example, during the elimination period</p> <p>3 you don't get benefits, right?</p> <p>4 A. Could you say that again, please.</p> <p>5 Q. The policy sets forth conditions that, if they exist,</p> <p>6 you're not entitled to benefits. For example, during</p> <p>7 the elimination period you're not entitled to</p> <p>8 benefits, right?</p> <p>9 A. Yes.</p> <p>10 Q. And after the maximum benefit duration period you're</p> <p>11 not entitled to benefits, right?</p> <p>12 A. Yes.</p> <p>13 Q. You're not entitled to benefits for intentionally</p> <p>14 inflicted wounds, right?</p> <p>15 A. I don't have any personal knowledge of that one.</p> <p>16 Q. If you'd turn to page 4, the Limitations and</p> <p>17 Exclusions provision. The second column says the</p> <p>18 policy doesn't cover any loss caused by war,</p> <p>19 self-inflicted injury that's intentional, injuries or</p> <p>20 sicknesses occurring where you're in the military</p> <p>21 service other than active duty for training purposes</p> <p>22 only for less than 60 days, normal pregnancy or</p> <p>23 resulting childbirth, right?</p> <p>24 A. That's what the policy says, yes.</p> <p>25 Q. And the residual disability benefit doesn't pay</p>	<p>1 disciplined for the manner in which they handled Mr.</p> <p>2 Kearney's claim?</p> <p>3 A. No, I am not.</p> <p>4 Q. In fact, nobody was fired for making those years and</p> <p>5 years of mistakes?</p> <p>6 A. I don't know.</p> <p>7 Q. Has anyone quantified what the result of those</p> <p>8 mistakes were monetarily to Jefferson-Pilot?</p> <p>9 A. I believe they were quantified in the pleadings.</p> <p>10 Q. Okay. No one was criticized or disciplined or</p> <p>11 counseled for having caused Jefferson-Pilot to lose so</p> <p>12 much money?</p> <p>13 A. I don't know.</p> <p>14 Q. Are there any internal controls regarding benefit</p> <p>15 payments? Do you audit internally your claim</p> <p>16 administrators' performances?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. Do you know if Mr. Kearney's mistaken payments</p> <p>19 over eight or nine years or ten years were ever</p> <p>20 audited?</p> <p>21 A. I don't know.</p> <p>22 (Defendant's Exhibit No. 16 was marked for</p> <p>23 identification by the reporter.)</p> <p>24 MR. ELLIS: Now you are way beyond the</p> <p>25 30(b)(6).</p>

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<p>1 Q. I've marked as Exhibit 16 a document titled Practical 2 Disability Claims Management Techniques which purports 3 to be authored by a gentleman named Dominick 4 LaGravinese and it sets forth practical disability 5 claims management techniques. Could you read through 6 this and tell me if you would disagree with any of 7 Mr. LaGravinese's statements of what are practical 8 disability claims management techniques. 9 A. If I would disagree? 10 Q. Uh-huh. 11 A. Where -- 12 Q. Read through this and if you come across something 13 that, you know, you disagree with, just tell me, and 14 if you don't disagree with it, just continue reading 15 on. 16 A. (Witness reviews document) 17 (Brief recess) 18 Q. Okay. You've finished reading that document 19 Exhibit 16? 20 A. Yes. 21 Q. Is there anything in there that you would disagree 22 with? 23 A. From the standpoint of -- 24 Q. It's about claim administration practices. 25 A. No.</p>	<p>1 scope of the 30(b)(6) Notice. 2 MR. ROBERTS: It has to do with the 3 administration of the claim. I asked for the person 4 who had knowledge of the administration of the claim. 5 MR. ELLIS: Didn't (inaudible) JP that has 6 that that you're not already getting. 7 MR. ROBERTS: Whatever, Big Brother. 8 Q. I'm going to read to you a sentence and I want your 9 judgment of what it may mean in the context of this 10 case. On the second page, the second paragraph, 11 halfway through in the middle of the line, the ninth 12 line, there's a sentence that says, "In order to strip 13 Mr. Kearney of the ability to allege bad faith or at 14 least best position ourselves to defend such a claim, 15 it's my recommendation that we continue to pay Mr. 16 Kearney the monthly amount we have been paying under a 17 full and complete reservation of rights 18 contemporaneous with our pursuit of a declaratory 19 judgment action." Is that why Mr. Kearney's benefits 20 have continued at the June 2001 level through the 21 course of this lawsuit? 22 MR. ELLIS: Objection. 23 A. Is what why? 24 Q. In order to strip Mr. Kearney of the ability to allege 25 bad faith or at least best position the company to</p>
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<p>1 Q. Are you mindful that Bill Dempsey at Employers 2 Reinsurance Corporation sought a legal opinion about 3 whether or not COLA applied during a residual 4 disability before this lawsuit was filed? 5 A. I'm not aware of that. 6 Q. Do you know why it would be if your \$50,000-a-year 7 claim people can unambiguously determine that COLA 8 doesn't apply, why Mr. Dempsey as a lawyer would need 9 to get some legal opinion about its applicability? 10 A. I don't know. 11 (Defendant's Exhibits No. 17 and 18 were 12 marked for identification by Mr. Roberts.) 13 Q. We'll get back to 17 later. I'll show you Exhibit 18. 14 It's a letter from Geraldine Johnson to Mr. Dempsey. 15 Have you ever seen this letter before? 16 MR. ELLIS: Objection. This letter was 17 obviously attorney-client privilege and was produced 18 in error. 19 MR. ROBERTS: Not under Boone versus Vanliner 20 in Ohio under bad faith cases. 21 Q. Have you ever seen this letter before? 22 A. No. 23 Q. Why don't you take a moment to review it. 24 A. (Witness reviews document) 25 MR. ELLIS: I'll also object as beyond the</p>	<p>1 defend such a claim. 2 A. The reason that we're continuing to pay the benefit is 3 that we're seeking a declaratory judgment action from 4 the Court and we did not want to be held in bad faith 5 for denying the benefit before we got such a 6 declaration from the Court. 7 Q. Okay. So the only reason that you've maintained 8 paying him the May 2001 level of benefits as opposed 9 to completely refusing to pay him any COLA or any 10 Social Security Supplement is to strip him of the 11 ability to allege bad faith or at least best position 12 the company to defend such a claim -- 13 MR. ELLIS: Objection, misstates -- 14 Q. -- is that right? 15 A. Those were the statements in this letter. My 16 understanding of the reason we have continued to pay 17 the benefit is because we are attempting to handle the 18 claim in a good faith manner and not deny the claim or 19 cut off benefits until we've gotten a declaration from 20 the Court. 21 Q. From whom did you gain this understanding and when, 22 because my understanding is, you didn't know anything 23 about it until yesterday. 24 A. From the pleadings. 25 Q. Oh, from reading the pleadings last night, you</p>

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<p>1 concluded that Geraldine Johnson's advice to Employers</p> <p>2 Reinsurance back in December 2001 isn't the reason</p> <p>3 that payments have been maintained; you concluded</p> <p>4 while reading the pleadings with your children last</p> <p>5 evening that it's just because you're in good faith;</p> <p>6 it's not to strip Mr. Kearney of the ability to allege</p> <p>7 bad faith?</p> <p>8 MR. ELLIS: Objection.</p> <p>9 A. You're asking me why I think we have continued to pay</p> <p>10 the benefits.</p> <p>11 Q. Okay.</p> <p>12 A. And that's why I think we have continued to pay the</p> <p>13 benefits.</p> <p>14 Q. That's speculation on your part. You don't know why.</p> <p>15 A. That we're continuing to pay the benefits?</p> <p>16 Q. Yeah, at an amount that you think is improper. You</p> <p>17 assert that what he's getting today is improper, yet</p> <p>18 you're continuing to pay him what you believe to be an</p> <p>19 improper benefit?</p> <p>20 A. Until we can get a declaration from the Court.</p> <p>21 Q. And you're speculating that the reason you're paying</p> <p>22 him a benefit which is inconsistent with what you</p> <p>23 think the policy provides isn't to strip him of the</p> <p>24 ability to allege bad faith, but some other reason?</p> <p>25 MR. ELLIS: Objection.</p>	<p>1</p> <p>2 _____</p> <p>3 Signature of the Witness</p> <p>4</p> <p>5 SUBSCRIBED and SWORN TO before me this _____ day of</p> <p>6 _____, 2004.</p> <p>7</p> <p>8 _____</p> <p>9 NOTARY PUBLIC</p> <p>10</p> <p>11 My Commission expires: _____</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
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<p>1 Q. Is that right?</p> <p>2 A. The reason is to continue to act in good faith.</p> <p>3 Q. Okay. Is your review of the file consistent with</p> <p>4 Ms. Johnson's conclusion that Mr. Kearney's mental</p> <p>5 health is declining?</p> <p>6 A. I haven't reviewed the file.</p> <p>7 Q. Okay. She concludes by saying, "Bill, I know that you</p> <p>8 need to review this information with Jefferson-Pilot."</p> <p>9 Do you know if Mr. Dempsey ever discussed with</p> <p>10 Jefferson-Pilot the contents of this letter?</p> <p>11 A. I don't know.</p> <p>12 Q. Okay. Let me show you Exhibit 17. I've not been</p> <p>13 provided with the whole claims file and a motion to</p> <p>14 compel -- are you mindful that a motion to compel has</p> <p>15 been filed?</p> <p>16 A. No, I wasn't.</p> <p>17 Q. Okay. And there's additional information that's not</p> <p>18 been supplied to me, as I referenced to your counsel</p> <p>19 in my letter of April 28 which I've marked as</p> <p>20 Exhibit 17.</p> <p>21 MR. ROBERTS: Because there's not been a full</p> <p>22 disclosure of the information that's been requested,</p> <p>23 we're going to conclude this deposition now subject to</p> <p>24 reconvening. Thank you.</p> <p>25 (Deposition recessed at 5:00 p.m.)</p>	<p>1 ERRATA SHEET</p> <p>2 RE: Jefferson-Pilot v. Kearney</p> <p>3 DEPOSITION OF: Valerie Loftin</p> <p>4 Please read this original deposition with</p> <p>5 care, and if you find any corrections or changes you</p> <p>6 wish made, list them by page and line number below.</p> <p>7 DO NOT WRITE IN THE DEPOSITION ITSELF. Return the</p> <p>8 deposition to this office after it is signed. We</p> <p>9 would appreciate your prompt attention to this matter.</p> <p>10 To assist you in making any such</p> <p>11 corrections, please use the form below. If</p> <p>12 supplemental or additional pages are necessary, please</p> <p>13 furnish same and attach them to this errata sheet.</p> <p>14 Page ____ Line ____ should read:</p> <p>15 _____</p> <p>16 Reason for change _____</p> <p>17 Page ____ Line ____ should read:</p> <p>18 _____</p> <p>19 Reason for change _____</p> <p>20 Page ____ Line ____ should read:</p> <p>21 _____</p> <p>22 Reason for change _____</p> <p>23 Page ____ Line ____ should read:</p> <p>24 _____</p> <p>25 Reason for change _____</p>

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<p>Page 178</p> <p>1 Page ____ Line ____ should read:</p> <p>2 _____</p> <p>3 Reason for change _____</p> <p>4 Page ____ Line ____ should read:</p> <p>5 _____</p> <p>6 Reason for change _____</p> <p>7 Page ____ Line ____ should read:</p> <p>8 _____</p> <p>9 Reason for change _____</p> <p>10 Page ____ Line ____ should read:</p> <p>11 _____</p> <p>12 Reason for change _____</p> <p>13 Page ____ Line ____ should read:</p> <p>14 _____</p> <p>15 Reason for change _____</p> <p>16 Page ____ Line ____ should read:</p> <p>17 _____</p> <p>18 Reason for change _____</p> <p>19 Page ____ Line ____ should read:</p> <p>20 _____</p> <p>21 Reason for change _____</p> <p>22 Page ____ Line ____ should read:</p> <p>23 _____</p> <p>24 Reason for change _____</p> <p>25 _____</p>	
<p>Page 179</p> <p>1 STATE OF NORTH CAROLINA)</p> <p>2) CERTIFICATE</p> <p>3 COUNTY OF GUILFORD)</p> <p>4 I, REBECCA J. HUDDY, Notary Public, do hereby</p> <p>5 certify that VALERIE LOFTIN was duly sworn by me prior</p> <p>6 to the taking of her deposition; that said deposition</p> <p>7 was taken and transcribed by me; and that the</p> <p>8 foregoing one hundred seventy-eight (178) pages are a</p> <p>9 true and accurate transcript of the testimony of said</p> <p>10 VALERIE LOFTIN.</p> <p>11 I further certify that I am not of counsel</p> <p>12 for or in the employment of any of the parties to this</p> <p>13 action, nor am I interested in the result of said</p> <p>14 action.</p> <p>15 IN WITNESS WHEREOF, I have hereunto</p> <p>16 subscribed my name this 12th day of May, 2004.</p> <p>17</p> <p>18</p> <p>19</p> <p>20 <u>REBECCA J. HUDDY</u></p> <p>21 Notary Public</p> <p>22 My Commission Expires July 26, 2005</p> <p>23</p> <p>24</p> <p>25</p>	

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